

REMARKS

Claims 1-32 are in the case. Claim 13 has been amended to more clearly define Applicants invention. Claims 1-32 have been made subject to a requirement to restrict. The Examiner has taken the position that the Claims define 9 separate inventions. In relevant part the Examiner suggests that Claims 6, 14 and 16-18 define a separate invention and are drawn to an isolated nucleic acid molecule of SEQ ID NO:18, a molecule having 95% identity to SEQ ID NO:18 and vectors and host cells comprising the same, classified in class 435, subclass 320.1.

Election of claims is required under 37 CFR 1.143

Accordingly Applicants hereby elect Group III encompassing Claims 6, 14 and 16-18, with traverse. Applicants submit that claims 13 and 15 should be included in Group III as those claims are not independent or distinct from the claims of Group III, with respect to SEQ ID NO:18 and thus should have been included in Group III, in part.

It is axiomatic that for a restriction requirement to be proper "... one of two or more claimed inventions must be able to support separate patents and they are either independent (MPEP § 806.04 - § 806.04(j)) or distinct" (MPEP § 806.05 - § 806.05(i)).

The MPEP defines independent as follows:

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed or (2) process and apparatus incapable of being used in practicing the process. [MPEP 802.01]

Distinct is defined:

The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term related is used as an alternative for dependent in referring to subjects other than independent subjects. . [MPEP 802.01]

Applicants submit that Claims 13 and 15 are neither independent nor distinct from those of Group III. Claims 13 and 15 are not independent because there is a connection between the claims of Group III as to the design, operation, or effect of claims 13 and 15. The claims of Group III are drawn in part, to an isolated nucleic acid molecule as set forth in SEQ ID NO:18. Claim 13 couples that molecule to a regulatory sequence and claim 15 includes

that chimera in a vector. The design, operation, or effect of the molecule is the same whether in a vector or whether under the control of regulator sequences. Thus, the inventions are not independent.

Similarly the inventions are not distinct because the subject matter of claims 13 and 15 is not patentable over the subject matter of the claims of Group III. The linking of a promoter to make a chimeric gene or the insertion of that chimeric gene into a vector does not render the subject matter of the claims of Group III independently patentable. Hence, Claims 13 and 15 are not distinct from the claims of Group III. Applicants note there that claims 13 and 15 are included in Group I and have not been considered independent and distinct from the rest of the claims of Group I which mirror those of Group III with the exception of the sequences claimed.

Applicants respectfully request that claims 13 and 15 be included in Group III in part as they apply to SEQ ID NO:18.

Please cancel claims 1-5, 7-12 and 19-32 as drawn to a non-elected invention.

The above Election of Claims and cancellation of Claims does not alter the inventorship of the application.

Applicants reserve the right to file a divisional application to the non-elected matter. In making this election Applicants make no representations or admissions regarding the reasoning employed by the Examiner in support of the restriction.

Should there be any fee due in connection with the filing of this Response To Restriction Requirement please charge such fee to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

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